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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DAVID JAMES HARVEY,

Plaintiff,

v.

VERIFIED COMPLAINT

Index No.:

THE DIOCESE OF BUFFALO, NEW YORK,
ST. EDMUND ROMAN CATHOLIC CHURCH, a/k/a
ST. CHRISTOPHER'S ROMAN CATHOLIC CHURCH,

Defendants.

Plaintiff DAVID JAMES HARVEY, by and through their attorneys, HOGANWILLIG, PLLC, as and for their Verified Complaint against Defendants THE DIOCESE OF BUFFALO, NEW YORK (Defendant "Diocese") and ST. EDMUND ROMAN CATHOLIC CHURCH, a/k/a ST. CHRISTOPHER'S ROMAN CATHOLIC CHURCH (Defendant "St. Edmund") herein, alleges as follows:

1. At all times hereinafter mentioned, Plaintiff was and still is a resident of the City of Buffalo, County of Erie, and State of New York.
2. Upon information and belief, and at all times hereinafter mentioned, Defendant Diocese was and is a Roman Catholic diocese headquartered in Buffalo, New York, with its principal place of business located at 795 Main Street, Buffalo, New York.
3. Upon information and belief, Defendant St. Edmund was a Roman Catholic church that merged with St. Christopher's Roman Catholic Church in or about 2008, with its principal place of business located at 530 Ellicott Creek Road, Tonawanda, County of Erie, State of New York.

4. Upon information and belief, and at all relevant times hereinafter mentioned, Defendant Diocese operated churches and schools including, during the relevant times herein, Defendant St. Edmund.

FACTS COMMON TO ALL CLAIMS

5. Upon information and belief, during the times relevant to the allegations set forth herein, Father David J. Peter ("Father Peter") was a priest at Defendant St. Edmund.

6. Upon information and belief, during the times relevant to the allegations set forth herein, Father Peter was under the direct supervision, employ, and/or control of Defendants.

7. Upon information and belief, Father Peter's assignments from approximately 1967-2002 included: St. Joseph's Catholic Church in Niagara Falls; St. James Catholic Church in Buffalo; St. Agatha's Catholic Church in Buffalo; St. John the Baptist Catholic Church in Lockport; Defendant St. Edmund; St. Rose of Lima Parish in Forestville; Infant of Prague in Cheektowaga; Immaculate Conception in Ransomville; Nativity of Our Lord in Orchard Park; St. Francis Xavier Parish in Buffalo; Immaculate Conception in Eden; and Our Lady of the Rosary in Niagara Falls.

8. Upon information and belief, Father Peter died in 2017.

9. Through his positions at, within, or for the Defendants, Father Peter was put in direct contact with Plaintiff, who was an altar boy at Defendant St. Edmund, beginning in the late 1970s.

10. From approximately 1978 through 1979, Plaintiff was the victim of sexual harassment, sexual abuse, and violence by or at the direction of Father Peter, and with the acquiescence, approval, participation, and implied permission of Defendants Diocese and Defendant St. Edmund.

11. Upon information and belief, Father Peter's sexual abuse began when Plaintiff was approximately eight years old.

12. Upon information and belief, some of the incidents experienced by Plaintiff over a period of approximately one (1) year included, but are not limited to, the following:

- a. In 1978, Father Peter invited Plaintiff and other altar boys, including Plaintiff's brother, on a boat trip as a "reward" for their work.
- b. While on the boat, Father Peter invited Plaintiff to take a tour of the boat, and Plaintiff was led into the cabin of the boat.
- c. Within the cabin of the boat, Father Peter penetrated Plaintiff with his fingers.
- d. Father Peter grabbed Plaintiff by the neck and ordered Plaintiff not to tell anyone about the penetration, or Father Peter would hurt Plaintiff's brother.
- e. The week after the boat trip, Father Peter led Plaintiff into the kitchen of Defendant St. Edmund and shoved Plaintiff against the wall and grabbed him by the neck, before penetrating him with his fingers again.
- f. Father Peter made Plaintiff lick his fingers after Father Peter had finished penetrating him.
- g. On at least one occasion, Father Peter asked Plaintiff to take a shower with him at Defendant St. Edmund, while another priest kept watch.
- h. On at least one occasion, Plaintiff asked another priest to stop the abuse that Father Peter was committing/attempting to commit, and was ignored.
- i. On multiple occasions, Father Peter would forcibly rape Plaintiff in the rectory, kitchen, church, and office of Defendant St. Edmund.

13. Upon information and belief, Father Peter had seven (7) different assignments from Defendant Diocese since 1983.

14. Upon information and belief, Plaintiff attempted to apply for compensation under Defendant Diocese's Independent Reconciliation and Compensation Program in or about 2018, and was denied.

15. Venue is proper based on based upon Plaintiff's residence and the principal place of business of Defendants.

16. This action is brought pursuant to CPLR § 214-G, as added by the New York Child Victims Act, which has revived claims of child sexual abuse for a period of one year beginning on August 14, 2019, six months after the effective date of the section (February 14, 2019). This action is timely commenced.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS: NEGLIGENCE

17. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “16” as though more fully set forth herein.

18. Father Peter, as an agent, servant, and/or employee of Defendants, was a religious figure and educator who had physical custody of Plaintiff for sanctioned activities such as altar serving, and owed Plaintiff a duty of care.

19. Defendants were *in loco parentis* and owed Plaintiff a duty of care.

20. Defendants breached their duty of care owed to Plaintiff when they allowed Plaintiff to be in contact with Father Peter.

21. Defendants knew or should have known of the sexual abuse, sexual harassment and violence occurring at Defendant St. Edmund and on the boat Father Peter took Plaintiff on, and breached their duty owed to Plaintiff when they failed to report the sexual abuse, sexual

harassment, and violence occurring at Defendant St. Edmund and on the boat Father Peter took Plaintiff on, and failed to remove Father Peter.

22. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

23. As a result of Defendants' breach, Plaintiff has incurred and will incur medical costs to treat their past, present, and future psychological suffering as a result of being victims of sexual abuse, sexual harassment, and violence at Defendant St. Edmund and on the boat Father Peter took Plaintiff on.

24. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS:
FAILURE TO REPORT

25. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "24" as though more fully set forth herein.

26. Defendant St. Edmund, through its agents, servants, and employees, was a Mandated Reporter under New York Social Services Law.

27. Defendants, through their agents, servants, and employees, had reasonable cause to suspect that Plaintiff was being abused and/or maltreated by Father Peter over the one (1) year period of 1978 – 1979.

28. Defendants, through their agents, servants, and employees, knowingly and willfully failed to report the suspected child abuse or maltreatment to anyone, including the police or Child Protective Services.

29. Defendants did not provide their employees with written information on reporting requirements.

{H2306516.1}

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HOGANWILLIG

Attorneys at Law

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printing, had not been reviewed and approved by the County Clerk. Phone 716.636.7600 | Toll Free 800.636.5255 | Fax 716.636.7606 | www.hoganwillig.com

30. Defendants failed to follow the policies of required reporting including, but not limited to, the policies listed in the Code of Conduct for Priests, Deacons, Pastoral Ministers, Administrators, Staff and Volunteers, as well as New York Consolidated Laws, Social Services Law - SOS § 413.

31. Defendants are liable for the failure to report pursuant to New York Consolidated Laws, Social Services Law - SOS § 420.

32. The knowing and willful failure of Defendants, through the inaction of their agents, servants, and employees, to report the child abuse and maltreatment of Plaintiff was a proximate cause of Plaintiff's damages.

33. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

34. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "33" as though more fully set forth herein.

35. During the time period of approximately 1978-1979, Defendants allowed Father Peter unrestricted access to Plaintiff and willfully and/or intentionally ignored complaints against Father Peter of sexual abuse, sexual harassment, and violence.

36. During the time period referenced above, Defendants willfully and/or intentionally ignored Plaintiff's safety by requiring and allowing Plaintiff to be watched by Father Peter by himself before, during, and after religious activities.

37. Defendants were deliberately indifferent to the risk of sexual harassment and violence posed to Plaintiff by being alone with Father Peter.

38. Defendants willfully and/or intentionally created a hostile and unsafe religious and educational environment that no child would be able to tolerate.

39. Defendants, in order to avoid embarrassment, scandal, and negative publicity, intended to cause Plaintiff shame, humiliation, and extreme emotional distress so he would stay silent, and not report the abuse.

40. Defendants behaved in a manner toward Plaintiff that was so outrageous as to exceed all reasonable bounds of decency.

41. Defendants knew with substantial certainty or should have known that their behavior would cause Plaintiff to be a victim of sexual abuse, sexual harassment, and violence.

42. Defendants knew with substantial certainty or should have known that their behavior would cause severe emotional distress to Plaintiff.

43. The foregoing acts of Defendants caused Plaintiff physical, mental and emotional distress.

44. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

45. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "44" as though more fully set forth herein.

46. Defendants, through their agents, servants, and/or employees, were negligent when they allowed Plaintiff to continue to be exposed to Father Peter after being provided with and/or ignoring allegations of sexual harassment, sexual abuse, and violence committed by Father Peter.

47. Defendants knew or should have known this inaction would subject Plaintiff to further sexual harassment, sexual abuse, and violence, and knew or should have known this would unreasonably endanger Plaintiff's safety, cause them to fear for their safety, and cause them severe emotional distress.

48. Defendants owed a duty to Plaintiff to protect them from sexual harassment, sexual abuse, and violence from Father Peter, including but not limited to when on the premises of Defendant St. Edmund.

49. Defendants breached the duty owed to Plaintiff to protect them from sexual abuse, sexual harassment, and violence from Father Peter, including but not limited to when on the premises of Defendant St. Edmund.

50. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

51. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS: NEGLIGENT
HIRING**

52. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "51" as though more fully set forth herein.

53. Defendants owed Plaintiff a duty of care to supervise and protect Plaintiff.

54. Defendants were obligated to Plaintiff to hire and/or assign personnel, including religious staff such as Father Peter, to ensure that the children assigned said personnel would be in a safe educational and religious environment.

55. Defendants knew or should have known at the time of Father Peter's assignment to Defendant St. Edmund of his propensity for the conduct which caused the injury.

56. Plaintiff was a victim of sexual abuse, sexual harassment, and violence by or at the direction of Father Peter.

57. Defendants breached their duty of care to Plaintiff when they negligently hired Father Peter.

58. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

59. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT SUPERVISION AND RETENTION

60. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "59" as though more fully set forth herein.

61. Defendants owed Plaintiff a duty of care to supervise and protect Plaintiff.

62. Defendants were obligated to Plaintiff to supervise the personnel assigned to watch Plaintiff, including but not limited to while on the premises of Defendant St. Edmund, to ensure that Plaintiff was in a reasonably safe environment.

63. Plaintiff was a victim of sexual abuse, sexual harassment, and violence by or at the direction of Father Peter.

64. Defendants had knowledge or should have had knowledge of the sexual abuse, sexual harassment, and violence by or at the direction of Father Peter and negligently ignored the reports of the sexual abuse, sexual harassment, and violence by or at the direction of Father Peter until 2018.

65. Defendants did not terminate the employment or suspend the religious duties of Father Peter despite reports concerning the sexual abuse, sexual harassment, and violence committed by Father Peter.

66. Defendants breached their duty of care to Plaintiff when they negligently supervised and retained Father Peter.

67. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

68. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS:
PUNITIVE DAMAGES**

69. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "68" as though more fully set forth herein.

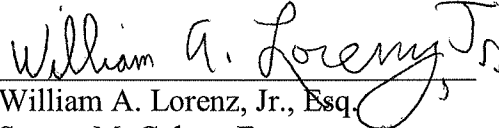
70. Defendants' knowledge of the violence, sexual harassment, and/or misconduct against Plaintiff at Defendant St. Edmund and on the boat by or at the direction of Father Peter is tantamount to a wanton and conscious disregard for the safety of Plaintiff and others, and warrants the imposition of punitive damages.

71. By reason of the malicious, intentional, willful, and/or negligent conduct of Defendants herein, and by such other acts that were morally reprehensible, Defendants' conduct evidenced a callous disregard for the safety of Plaintiff, and said acts constituted a wanton, reckless and/or malicious disregard for the rights of others and, as a result thereof, Plaintiff demands punitive damages.

72. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction, and for such other and further relief to Plaintiff as this Court deems just and proper.

DATED: July 2, 2019
Amherst, New York


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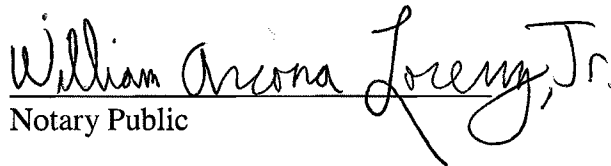
VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
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DAVID JAMES HARVEY, being duly sworn, deposes and says that: I am the Plaintiff herein; I have read the annexed Complaint and know the contents thereof, and the contents are true to my knowledge, except those matters alleged upon information and belief, and as to those matters, I believe them to be true:


DAVID JAMES HARVEY

Sworn to before me this 2nd day of
July, 2019


Notary Public

William Arcona Lorenz Jr
Notary Public, State of New York
Qualified in Erie County
Lic. # 02LO6285770
Commission Expires July 15, 2021